STATE OF MAINE
AROOSTOOK, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET #: ARO-13-269

STATE OF MAINE
APPELLEE

v.

KEVIN W. CARTON

AND

MICAH S. CARTON
APPELLANTS

ON APPEAL FROM THE
SUPERIOR COURT, AROOSTOOK COUNTY

BRIEF OF APPELLEE

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STATEMENT OF FACTS

On November 26, 2013, Trooper Jared Sylvia of the Maine State Police was dispatched to the Town of Amity. (Tr. at 12).[1] A report had been made by Lisa Hall, who is employed as a dispatcher with the Maine State Police. (Tr. at 12). Trooper Sylvia first spoke with Lisa Hall by phone and learned that her nephew, Mitchell Hall, had observed his cousins, Appellants Kevin Carton and Micah Carton, doing something that he believed to be manufacturing methamphetamine. (Tr. at 14, 26-27, 34). This reportedly had occurred at a family camp off of the Estabrook Road in the Town of Amity. (Tr. at 14). Trooper Sylvia then went to Amity and met with Lisa, Billy Jo Hall, and Perry Hall. (Tr. at 12-13, 28, 73). Billy Jo is Lisa's husband and Perry is her brother-in-law and the owner of the family camp located off of the Estabrook Road. (Tr. at 13-14, 72-73).

After speaking with the three Halls, Trooper Sylvia accompanied them to the camp, riding with them in a pickup truck because they had indicated that his cruiser would not be able to navigate the camp road. (Tr. at 14-15, 76). During the ride, Perry Hall indicated to Trooper Sylvia that he was the camp owner and that Trooper Sylvia had his permission to search the camp.[2] (Tr. at 15, 33, 69-70, 76-

[1] All citations to "Tr." refer to the transcript to the hearing on Appellants' motions to suppress held on November 26, 2014.

[2] Trooper Sylvia indicated that he was not sure which of the three Halls informed him that Perry Hall was the camp owner. (Tr. at 32). However, Perry Hall testified at the hearing that he was the owner of the camp and that he had given Trooper Sylvia permission to go in with him and search the camp. (Tr. at 81-82).

78).

Appellants had been staying at the camp owned by their uncle, Perry Hall, during hunting season. (Tr. at 72). The camp was used by multiple members of the family including Perry Hall and his son, Mitchell Hall. (Tr. at 79-80). The camp contained a small bunk-room where any individuals using the camp would sleep. (Tr. at 81). The bunk room was available to be used by any staying at the camp and was not a private bedroom. (Tr. at 81). As the owner of the camp, Perry Hall intended to remove his nephews from the camp if they were doing anything there that they were not supposed to be doing. (Tr. at 74, 80). Notwithstanding the fact that his nephews were permitted to regularly use the hunting camp, Perry Hall had the authority to remove them from the camp because he was in fact the owner of the camp. (Tr. at 80).

Upon arrival at the camp, the three Halls exited the vehicle and entered the camp, followed very soon after by Trooper Sylvia. (Tr. at 16, 36, 38). When Trooper Sylvia entered the camp he observed Appellants inside the camp. (Tr. at 16). Either Kevin or Micah Carton asked what was going on when Trooper Sylvia and his relatives entered. (Tr. at 62, 81). Trooper Sylvia responded that he was there with members of their family to look around. (Tr. at 57, 62, 79). At no time did Appellants challenge Trooper Sylvia's authority to look around with their family members. Neither did either of them seek to revoke the permission that

Trooper Sylvia expressed to them.

Trooper Sylvia looked around the camp and located a reaction vessel or "one pot" in the bunk area along with some drain cleaner, an item often used in the manufacture of methamphetamine. (Tr. at 16, 18, 42). Trooper Sylvia is a trained member of the Maine Drug Enforcement Agency's Clandestine Drug Lab Enforcement Team (MDEA-CDLET). (Tr. at 11). He recognized the bottle containing "sludge" to be a reaction vessel that had already been used in the "one pot" process of manufacturing methamphetamine.[3] (Tr. at 17, 42). He further knew based upon his training and experience as a MDEA-CDLET member who had responded to approximately 50 methamphetamine labs, that the next step in the process was "gassing" the meth oil produced in the reaction vessel with hydrogen chloride gas. (Tr. at 19, 46, 58). He knew that hydrogen chloride gas was toxic and that he regularly wears a respirator to avoid breathing it when responding as a member of the MDEA-CDLET. (Tr. at 48-49).

After Trooper Sylvia found the reaction vessel, he handcuffed Appellants.

[3] The Law Court has addressed the process of manufacturing methamphetamine through the "one pot" or "shake and bake" method.

> [T]he process involves combining ammonium nitrate, pseudoephedrine, strips from lithium batteries, acetone, sodium hydroxide or lye, and camp fuel in a soda or Gatorade bottle, which creates a chemical reaction and allows the chemicals to "cook." This process results in "meth oil," a liquid form of methamphetamine. . . . [O]nce meth oil is formed, it is typically transferred to a glass container, sometimes by using tubing. The manufacturer will typically then use muriatic acid, sulfuric acid, and salt to create *hydrogen chloride gas*. The gassing process results in the separation of a solid form of methamphetamine that is usable as soon as it dries.

State v. Fox, 2014 ME 136, 105 A.3d 1029 (emphasis added).

(Tr. at 18, 45). Trooper Sylvia, both Carton brothers and the three Halls were all still in the camp. (Tr. at 18). At that point, Trooper Sylvia's main concern "was the hazards from the chemicals and from what is called the gassing generator." (Tr. at 18). Knowing that hydrogen chloride gas produced by the gassing generator was toxic and harmful if inhaled, Trooper Sylvia asked where the gassing generator was located. (Tr. at 20-22, 49-50). Trooper Sylvia did not read Appellants their *Miranda* rights prior to asking this question. (Tr. at 22). Appellant Kevin Carton responded that the gassing generator was broken and was outside of the camp. (Tr. at 23). Trooper Sylvia asked no other questions relating to what was going on in the camp. (Tr. at 23). Trooper Sylvia, along with the Halls and Appellants rode in the pickup truck back to Trooper Sylvia's cruiser where arrangements were made for Appellants to be transported to the Maine State Police Barracks in Houlton. (Tr. at 53, App. at 105).

At the barracks, S/A Erica Pelletier of the Maine Drug Enforcement Agency (MDEA) advised Appellant Micah Carton of his rights and interviewed him. (App. at 105-06). Micah Carton advised that he had been staying at the hunting camp for approximately two weeks and had made methamphetamine four to five times. (App. at 106). He acknowledged that the item found by Trooper Sylvia was a reaction vessel that they were reusing and he did not believe there was any liquid left in the bottle because it had been strained out. (*Id.*). S/A Pelletier attempted to

interview Appellant Micah Carton also; however, he indicated that he did not wish to speak with her. (*Id.*). He added that he did not understand why she wanted to talk with him because she already knew what he did. (*Id.*).

On November 27, 2013, S/A Pelletier applied for a warrant to search the hunting camp before District Court Judge Bernard O'Mara. (App. at 101-09). The affidavit offered in support of the warrant's issuance indicated *inter alia* that Trooper Sylvia had observed Micah Carton "manufacturing methamphetamine" in the kitchen of the camp when he entered. (App. at 105). Judge O'Mara issued the search warrant. (App. at 96-99).

On March 6, 2014, Appellants were charged by indictment with unlawful trafficking of scheduled drugs (Class B), 17-A M.R.S. § 1103(1-A)(A) (2015). (App. at 29-30). On June 18, 2014, they entered pleas of not guilty. (App. at 3, 10). On July 25, 2014, they filed three motions to suppress challenging respectively: (1) the warrantless search of the camp; (2) all statements made by Appellants, and (3) the subsequent execution of a search warrant at the camp by challenging the warrant's validity pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). (App. at 35-41).[4] The State thereafter filed written objections. (App. at 43-52).

[4] Specifically Appellant indicated that Trooper Sylvia observed Micah Carton "cooking supper in the kitchen" rather than "cooking methamphetamine in the kitchen." (App. at 37, 41). The State conceded that the challenged statement was no true; however, did not concede that such misstatement was intentionally or knowingly made or was made with reckless disregard for the truth. (App. at 79, 92).

A motion hearing was held on November 26, 2014. (App. at 4, 11). During the hearing Appellant Kevin Carton, through counsel, withdrew any challenges raised in his Second Motion to Suppress to stationhouse statements made following the administration of *Miranda* rights.[5] (Tr. at 64-65). Appellants further requested that the Court provide further time for them [6]to brief their request for a *Franks* hearing prior to making the preliminary determination as to whether or not they were entitled to such a hearing. (Tr. at 65-67). Accordingly, a hearing on Appellants' Third Motion to Suppress was not held. (Tr. at 67-68).

Both the State and Appellants subsequently filed post-hearing memoranda. (App. at 4, 11). Following such, the court (*Stokes, J.*) issued a written order denying Appellants' motions to suppress in their entirety. (App. at 18-28). On May 6, 2015, Appellants entered conditional pleas of guilty to each single count indictment with the written consent of the State and the approval of the court (*Stokes, J.*). (App. at 4, 11, 31-32). On May 20, 2015 the court (*Stokes, J.*) sentenced Defendant to 54 months of confinement with all but 6 months suspended and to be followed by 3 years of probation. (App. at 4-5, 11-12, 14-17). The court also imposed a $2000 fine. (*Id.*).

[5] The subsequent post-*Miranda* statements were made to Special Agent Erica Pelletier of the Maine Drug Enforcement Agency at the Maine State Police Barracks in Houlton. Special Agent Pelletier was available to testify at the hearing, but the State did not call her because Defendant withdrew any objection to the statements made to her.

[6] Appellants have both abandoned their request for a *Franks* hearing on this appeal.

STATEMENT OF ISSUES

1. Was Trooper Jared Sylvia's search of the hunting camp pursuant to the consent of the lawful owner, Perry Hall, or did such search violate the fourth amendment?

2. Was administration of *Miranda* warnings required prior to Trooper Jared Sylvia's inquiry as to the location of a hydrogen chloride gas generator in light of the public safety exception to the *Miranda* rule?

SUMMARY OF ARGUMENT

The trial court correctly held that Trooper Sylvia's search of the hunting was lawful pursuant to the consent of the camp's owner, Perry Hall. As the owner and a regular occupant of the hunting camp, Perry Hall had authority to grant consent. Such authority extended to utilizing the assistance of the State Police in searching the camp and removing Appellants, neither of whom objected to the search.

The trial court correctly held that Appellant Kevin Carton's statement as to the location of a hydrogen chloride gas generator in response to Trooper Sylvia's custodial pre-*Miranda* question was admissible under the public safety exception to the Fifth Amendment. Such holding was appropriate based upon the potential dangers from hydrogen chloride gas faced by Trooper Sylvia, Appellants, and Appellants' family members.

ARGUMENT

I. TROOPER JARED SYLVIA'S SEARCH OF THE

HUNTING CAMP WAS PURSUANT TO THE CONSENT OF THE LAWFUL OWNER, PERRY HALL, AND DID NOT VIOLATE THE FOURTH AMENDMENT.

In Appellants' First Motion to Suppress they seek the suppression of Trooper Sylvia's warrantless search of the hunting camp. "The Fourth Amendment to the United States Constitution and article 1, section 5 of the Maine Constitution guarantee the right of the people to be secure against unreasonable searches and seizures."[7] *State v. Glover*, 2014 ME 49, ¶ 10, 89 A.3d 1077. "A warrantless search is unreasonable unless it is conducted pursuant to a recognized exception to the warrant requirement." *Id.* "A search conducted pursuant to consent is one of the well-settled and "established exceptions to the requirements of both a warrant and probable cause.'" *State v. Nadeau*, 2010 ME 71, ¶ 17, 1 A.3d 445 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973)).

A person with a superior *possessory* interest in the location to be searched, such as the owner or sole lessee, maintains a sufficient relationship with the premises to grant consent to search. *See State v. Grandmaison*, 327 A.2d 868, 870 (Me. 1974) (When the sole lessee of an apartment grants consent to search and the defendant is merely a guest therein the lessee's "possessory rights thus exceeded [the defendant's], a warrantless search pursuant to her consent is legally valid.").

[7] In order to have standing Appellants must establish that they had a reasonable expectation of privacy in the property to be searched. Based upon the Supreme Court's holding in *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990), and hearing testimony that Appellants were overnight guests in the hunting camp, the State does not challenge Appellants' standing to challenge Trooper Sylvia's warrantless search on November 26, 2013. *See also State v. Filion*, 2009 ME 23, ¶ 12, 966 A.2d 405.

See also State v. Thibodeau, 317 A.2d 172, 178 (Me. 1974) ("Where the consenting person . . . had more than joint and equal possession and control of the premises, a fortiori, he had sufficient control to bind other occupants by his consent to a search.").

> It would be unreasonable—indeed absurd—to require police officers to obtain a warrant when the sole owner or occupant of a house or apartment voluntarily consents to a search. The owner of a home has a right to allow others to enter and examine the premises, and there is not reason why the owner should not be permitted to extend this same privilege to police officers if that is the owner's choice.

Fernandez v. California, 134 S.Ct. 1126, 1132 (2014). Such superior possessory right only gives way to an occupier of the premises in cases where exclusive possession has been formally granted by way of lease or rental. *See Stoner v. California*, 376 U.S. 483 (1964) (hotel manager could not consent to search of guest's room); *Chapman v. United States*, 365 U.S. 610 (1961) (landlord could not consent to search of tenant's home).

In the case now before the Court, Perry Hall testified that he was the sole owner of the camp. He permitted other family members, such as Appellants, to utilize the camp at their pleasure. However, he still maintained authority as the owner and his family members utilized the camp as his guests. He had authority to eject others from the camp, which he purposed to do if the suspicions of criminal activity by Appellants were verified. Under such circumstances, Perry Hall had superior possessory interest in the camp such that he could invite the State Police

to search. Appellants were Perry Hall's guests. By a mere oral demand to vacate, their status could have been converted from authorized guests to trespassers. *See* 17-A M.R.S. § 402(1)(D) ("A person is guilty of criminal trespass if . . . that person [r]emains in any place in defiance of a lawful order to leave."). *See also State v. Tauvar*, 461 A.2d 1065, 1067 (Me. 1983) ("The mere demand of the owner constitutes a lawful order for the purposes of the criminal trespass statute.").

In such a case where Perry Hall had the authority to order Appellants to vacate the property, such superior possessory interest also vested in him the authority to consent to the search of the premises.[8] A contrary conclusion would yield absurd results, contrary to sound public policy. If Perry Hall's superior possessory interest and authority over his hunting camp is not recognized then property owners would be deprived of their ability to seek the aid of the police to eject now unwanted guests in an efficient manner or rid their property of formerly welcomed visitors who have chosen to engage in criminal activity during their stay. In the present situation, Perry Hall could have requested that Trooper Sylvia go alone to the camp and inform Appellants on his behalf that they were no longer welcome at the camp. He could further have requested that they be removed against their wills if they refused. Such superior authority of a property owner

[8] The State suggests that such authority would be effective even in the face of an objection from Appellants; however, the facts of the present case demonstrate that neither Appellant objected to the search. *See Georgia v. Randolph*, 547 U.S. 103, 114 (2006) (indicating that a co-habitant's refusal invalidates the consent of another habitant "[u]nless the people living together fall within some recognized hierarchy.").

over property occupied by mere guests is based upon the same fundamental principle upon which the Fourth Amendment is based, namely "the ancient adage that a man's house is his castle." *Georgia v. Randolph*, 547 U.S. 103, 115 (2006).

In addition to a person with *superior* possessory interest, a person with *common authority* over property may grant law enforcement consent to search.

> [W]hen the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.

United States v. Matlock, 415 U.S. 164, 171 (1974) (officers admitted to search by adult daughter of property owner who also resided in residence with owner). *See also Grandmaison*, 327 A.2d at 870 ("One who possesses common authority over premises has a sufficient interest in his own right to permit its inspection."). "The authority which justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements but rests rather on mutual use of the property by persons generally having joint access or control for most purposes." *Id.* at 171 n. 7 (citations omitted).

In the case now before the Court, Perry Hall testified that he was the owner of the camp, but that he allowed members of his family, including Appellants, to use the camp freely. He also testified that other members of the family were free to use the camp and that he personally utilized the camp. The facts of this case

demonstrate that Perry Hall's son, Mitchell Hall, had utilized the camp on November 26, 2013 because he was the one that reported his suspicions that Appellants were manufacturing methamphetamine.

Such facts establish that Perry Hall had mutual use and joint access to the hunting camp; therefore, at a minimum, he shared common authority over the hunting camp. Under the Supreme Court's holding in *Matlock*, such common authority made Trooper Sylvia's search of the camp in reliance upon Perry Hall's consent a reasonable search that did not violate the Fourth Amendment.

The Supreme Court has narrowly limited searches pursuant to the consent of a co-tenant such as the one in *Matlock*. In *Randolph* the Court held that "a warrantless search of a shared dwelling for evidence over the *express refusal* of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident." *Randolph*, 547 U.S. at 120 (emphasis added). In *Randolph*, the defendant's wife told police that her husband abused drugs and that items of drug evidence were inside their house. *Id.* at 107. The officer first asked the defendant, who was present, for permission to search the house, "which he unequivocally refused." *Id.* The officer then turned to his wife and asked her and she readily gave consent. *Id.*

The limitation set forth in *Randolph* does not place upon the police an affirmative obligation "to find a potentially objecting co-tenant before acting on

the permission they had already received." *Id.* at 122. The Court pointed to its prior decision in *Illinois v. Rodriguez*, 497 U.S. 177, 179 (1990), in which it upheld a consent search granted by an apparent co-tenant granted when the potential suspect was known to be inside the property and asleep. *See also State v. Gdovin*, 2008 ME 195, ¶ 9 n. 2, 961 A.2d 1099 (consent of co-tenant who invited police inside effective when the defendant was present and "did not object.").

The facts of the case now before this Court show that Trooper Sylvia entered pursuant to the permission of Perry Hall, who possessed, at minimum, common authority over the camp. Pursuant to *Rodriguez* and *Randolph*, he was not required to take affirmative steps to see if any potential co-tenants objected to his entry. Upon his entry, one of the appellants asked Trooper Sylvia, "What's up?" He responded by telling them that he was there with their family to look around the camp. Although physically present, at no point did either Appellant object to the search of the camp or express any refusal. Consequently, the limitation of *Randolph* is inapplicable because no "express refusal of consent" was communicated. *Randolph*, 547 U.S. at 120.

Trooper Sylvia's reliance on Perry Hall's consent is consistent with the rationale behind the Supreme Court's cases addressing third-party consent. Such cases are based upon "widely shared social expectations" or "customary social usage." *Fernandez*, 134 S.Ct. at 1135 (quoting *Randolph*, 547 U.S. at 121). If a

person arrives at a residence with another person who possesses common authority over the residence such person would feel free to enter based upon the consent of the co-tenant accompanying the person notwithstanding the presence of other non-objecting co-tenants. Therefore, Trooper Sylvia's entry and search of the camp was reasonable based upon the consent and presence of Perry Hall, notwithstanding the physical presence of Appellants.

Trooper Sylvia's search of the camp was lawfully conducted pursuant to the consent of Perry Hall, whose possessory interest in the camp was superior to that of Appellants and who at minimum shared common authority over the camp. Therefore, the State respectfully requests that this Court affirm the trial court's denial of Appellants' first motion to suppress.

II. ADMINISTRATION OF *MIRANDA* WARNINGS WAS NOT REQUIRED PRIOR TO TROOPER JARED SYLVIA'S INQUIRY AS TO THE LOCATION OF A HYDROGEN CHLORIDE GAS GENERATOR PURSUANT TO THE PUBLIC SAFETY EXCEPTION TO THE *MIRANDA* RULE.

Appellant Kevin Carton moved to suppress his response to Trooper Sylvia's question as to the location of the gassing generator because Trooper Sylvia had not yet administered *Miranda* warnings.[9] "A person who is in custody and subject to interrogation must be advised of the rights referred to in *Miranda v. Arizona* in

[9] No other pre-*Miranda* statements were made by either Appellant.

order for statements made during the interrogation to be admissible against him or her at trial." *State v. Dion*, 2007 ME 87, ¶ 21, 928 A.2d 746.

Notwithstanding the general *Miranda* rule, the Supreme Court has recognized a public safety exception to the requirement that *Miranda* warnings be administered. In *New York v. Quarles*, 467 U.S. 649, 653 (1984), the Court recognized this exception because "concern for public safety must be paramount to adherence to the literal language of the prophylactic rules enunciated in *Miranda*." In *Quarles* a young woman approached two officers in their patrol vehicle in Queens, New York, and told them that she had just been raped. *Id.* at 651. She told them what her assailant looked like and what he was wearing. *Id.* She told them that he had gone into a nearby supermarket and that he was carrying a gun. *Id.* at 651-52. The officers entered the supermarket and apprehended the defendant at gunpoint after he attempted to flee. *Id.* at 652. Upon arrest they discovered that he was wearing an empty gun holster. *Id.* One of the officers asked the defendant where the gun was located prior to the administration of *Miranda* warnings. *Id.* The defendant nodded in the direction of the gun and stated, "the gun is over there." *Id.*

The trial court suppressed the statement as to the location of the gun because the defendant was in custody and not provided with his *Miranda* warnings. *Id.* at 651. The State appellate courts affirmed but the Supreme Court granted certiorari

and reversed. *Id.* The Supreme Court reasoned that the *Miranda* rule should not be "applied in all its rigor to a situation in which police officers ask questions reasonably prompted by a concern for the public safety." *Id.* at 656. The Court recognized the need for law enforcement officers to be free to consider public safety first without having to weigh the potential need for admissible evidence at a later court proceeding.

> We decline to place officers . . . in the untenable position of having to consider, often in a matter of seconds, whether it best serves society for them to ask the necessary questions without the *Miranda* warnings and render whatever probative evidence they uncover inadmissible, or for them to give the warnings in order to preserve the admissibility of evidence they might uncover but possibly damage or destroy their ability to obtain that evidence and neutralize the volatile situation confronting them.

Id. at 657-58. The Court pointed out that the officer "asked only the question necessary to locate the missing gun before advising respondent of his rights." *Id.* at 659.

The public safety exception is properly applied to the circumstances involving the manufacturing of methamphetamine because "[t]he potential hazards of methamphetamine manufacture are well documented." *United States v. Walsh*, 299 F.3d 729, 734 (8th Cir. 2002) (collecting cases recognizing the dangers of clandestine drug manufacturing). *See also State v. Bilynsky*, 2007 ME 107, 932 A.2d 1169. Other courts have previously recognized the application of the public safety exception in the context of methamphetamine manufacturing.

In *United States v. King*, 366 F. Supp. 2d 265, 268 (E.D. Pa. 2005), officers obtained a search warrant at a property rented by the defendant based upon information that he was manufacturing methamphetamine. Law enforcement officers proceeded to the scene along with the local fire department. *Id.* After the officers observed the defendant driving away from the property, they had him arrested and brought back to the property while in custody. *Id.* The defendant was brought to the porch of the property and, prior to being advised of his *Miranda* rights, was asked questions relating to the existence of booby traps, toxic fumes, chemicals, and active "cooking." *Id.* at 269.

The court in *King* applied the public safety exception to the questions posed to the defendant as the law enforcement officers were preparing to enter a suspected clandestine methamphetamine laboratory. *Id.* at 274-75. It recognized "the dangers associated with having police officers enter [a] suspected clandestine methamphetamine laboratory." *Id.* at 275. When it was unknown whether any active "cooking" was taking place, "[a] clear threat of harm remained, and obtaining information from Defendant could minimize this threat." *Id.* Further, the officers directed their questions to the defendant "solely to obtain information that would help them address the potentially volatile and dangerous situation confronting police at the scene, and not simply to obtain incriminating information." *Id.* The Third Circuit affirmed stating that the record supported the

finding that "the primary object of the questions was to obtain safety information from Defendant before law enforcement personnel entered the potentially dangerous clandestine methamphetamine laboratory and the questions asked Defendant were consistent with this goal." *United States v. King*, 182 F. App'x 88, 91 (3rd Cir. 2006) (original alterations omitted).

In *United State v. Noonan*, 745 F.3d 934, 935 (8th Cir. 2014), a deputy arrested the defendant during a motor vehicle stop after he learned that the defendant had an active arrest warrant for manufacturing methamphetamine. The deputy also knew the defendant to be a "meth cook" based upon prior interactions. *Id.* at 938. After the defendant was in custody, the deputy informed him that he was going to move the defendant's car away from the roadway. *Id.* at 936. The defendant indicated that the deputy should wait for his friend who had left items in the car. *Id.* at 936. The deputy then inquired about items that might hurt him and specifically asked "does he have a one-pot in there?" *Id.* at 937. The deputy testified that he asked these questions because he "didn't want to get sprayed with any kind of chemical or exposed to any kind of chemical that would obviously hurt [him]." *Id.* at 938.

The court in *Noonan* applied the public safety exception because there is "a justifiable concern about the dangers surrounding the *manufacture* of methamphetamine, an 'inherently dangerous activity that creates substantial risks

to public health and safety.'" *Id.* at 938 (emphasis in original) (quoting *United States v. Ellefson*, 419 F.3d 859, 866 n.4 (8th Cir. 2005)). The court noted that the deputy had reason believe that dangerous items related to the manufacture of methamphetamine might be present and that this was evidenced by his pointed question, "does he have a one-pot in there." *Id.*

The present case is similar to *King* and *Noonan* in that (1) a potential for danger related to the manufacture of methamphetamine existed and (2) the law enforcement officer involved asked a question directly related to the potential danger at hand.[10] Trooper Sylvia testified that he discovered what he knew to be a reaction vessel utilized in the "one pot" method of manufacturing methamphetamine. He also testified that through his training as a member of the MDEA-CDLET, and through his experience in responding to roughly 50 methamphetamine labs, that he knew the next step in the manufacturing process to be the "gassing" process. The "gassing" process utilizes a separate vessel to produce toxic hydrogen chloride gas.[11] At this point Trooper Sylvia, Appellants, Leisa Hall, Billy Jo Hall, and Perry Hall were all in the hunting camp after Trooper

[10] While the question relates directly to the potential risk articulated by Trooper Sylvia, the availability of the public safety exception does not depend on the questioning officer's subjective motivation. *Quarles*, 467 U.S. at 655-56 ("the availability of that exception does not depend upon the motivation of the individual officers involved").

[11] The State of Maine has made a public effort to try and educate the citizenry of the State of Maine regarding the dangers of methamphetamine manufacturing including the fact that "[m]ixing the chemicals used in methamphetamine production produces toxic and potentially explosive fumes." DEPARTMENT OF HEALTH AND HUMAN SERVICES – OFFICE OF SUBSTANCE ABUSE, *Help Prevent Methamphetamine Manufacturing in Maine* (September 2012), *available at* http://www.maine.gov/dhhs/samhs/osa/prevention/community/meth/documents/Maine%20Methamphetamine%20Prevent%20Manufacture%20FINAL.pdf.

Sylvia located the reaction vessel. Trooper Sylvia knew through his training and experience that the next step in the manufacturing process produced toxic gas and that he and the five other people in the camp were in danger of exposure. Towards the goal of ensuring the safety of all present, Trooper Sylvia inquired as to the location of the gassing generator, to which Appellant Kevin Carton responded that it was outside and broken. After Trooper Sylvia learned that no toxic gas was being generated in the camp, he asked *no further questions* and completed the arrests of Appellants.

Similar to the facts in *Noonan*, Trooper Sylvia's "pointed question evidenced a justifiable concern about the dangers surrounding the *manufacture* of methamphetamine." *Noonan*, 745 F.3d at 938 (emphasis in original). The "questions were reasonably aimed at addressing the safety hazard posed by the manufacture of methamphetamine." *Id.* Similar to the facts in *King*, Trooper Sylvia "testified that the primary object of [his] questions was to obtain safety information" and "[t]he questions [he] asked Defendant were consistent with this goal." *King*, 366 F. Supp. 2d at 274.

This Court has recognized the public safety exception to the *Miranda* rule but has not previously addressed it in the context of methamphetamine manufacturing. *See State v. Lockhart*, 2003 ME 108, 830 A.2d 433; *State v. White*, 619 A.2d 92 (1993); *State v. Leone*, 581 A.2d 394 (1990). However, this Court has

recognized that the "potential hazards of methamphetamine manufacture are well documented" and has applied the exigent circumstances exception to the Fourth Amendment's warrant requirement in circumstances involving methamphetamine production. *Bilynsky*, 2007 ME 107, ¶ 30 (quoting *Walsh*, 299 F.3d at 734).

In *Bilynsky* the Court applied the exigent circumstances exception to a protective sweep conducted by law enforcement officers when (1) probable cause existed that methamphetamine manufacturing was in process, (2) the law enforcement officer was aware of the safety risks associated with the manufacture of methamphetamine, and (3) the search did not exceed the bounds of the exigency that justified the warrantless entry. *Id.* at ¶¶ 32-33. While the Fourth Amendment's reasonableness requirement differs from the Fifth Amendment's requirements set forth in *Miranda*, the Supreme Court has recognized that the former is illustrative of the latter. *See Quarles*, 467 U.S. at 653 n. 3. Consequently, the reasoning in *Bilynsky* also illustrates that the public safety exception to the *Miranda* rule is available in the context of methamphetamine manufacturing. In this case (1) Trooper Sylvia had probable cause to believe that methamphetamine manufacturing was taking place after he found a reaction vessel, (2) he was aware of the safety risks associated with the manufacture of methamphetamine, specifically the gassing process, and (3) the scope of his questions did not exceed what was necessary to address the known risks.

Trooper Sylvia was in a situation where he recognized that he and five other people bore the potential risk of exposure to hydrogen chloride gas. He asked where the item that would produce such gas was located. He asked no further questions once the potential risk of harm had abated. In such a situation, the public safety exception to the *Miranda* rule must apply; therefore, the State respectfully requests that this Court affirm the trial court's denial of Appellant Kevin Carton's second motion to suppress.

CONCLUSION

Based upon the foregoing the State requests that this Court sustain the trial court's order on Appellants' motions suppress and affirm the judgment entered in this matter.

Dated: January 11, 2016

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CERTIFICATE OF SERVICE

I hereby certify that I have, this day caused two copies of Appellee's Brief to be served upon the following persons via pre-paid U.S. Mail.

Matthew C. Garascia, Esq.
158 Fifth Street
Auburn, Maine 04210

Dated: January 11, 2016

Kurt A. Kafferlin
Attorney for the State